

**Dec 12, 2017**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

FRANCIS ANTHONY TREVINO,

Plaintiff,

v.

DEPARTMENT OF SOCIAL  
HEALTH SERVICE, SPOKANE  
COUNTY SUPERIOR COURT and  
SUPREME COURT OF  
WASHINGTON STATE,

Defendants.

NO: 2:17-CV-0153-SMJ

**ORDER DISMISSING FIRST  
AMENDED COMPLAINT**

BEFORE THE COURT is Plaintiff's First Amended Complaint, ECF No. 18. Plaintiff, a prisoner currently housed at the Coyote Ridge Corrections Center, is proceeding *pro se*. He initiated this action while incarcerated at the Spokane County Jail and has paid the full \$400.00 fee.

Subject to exceptions not relevant here, an amended complaint supersedes the original complaint and renders the original complaint without legal effect. *Lacey v. Maricopa County*, 693 F.3d 896, 927–28 (9th Cir. 2012). Furthermore,

1 Defendants not named in an amended complaint are no longer defendants in the  
2 action. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Therefore, the  
3 following Defendants have been terminated from this action: Bob Ferguson, Judge  
4 Triplet, American Corrections Corporation and Department of Corrections.

5 Plaintiff brings the First Amended Complaint against the Department of  
6 Social and Health Services, Spokane County Superior Court, and the Supreme  
7 Court of Washington State. He complains that between November 14, 2016, and  
8 December 25, 2016, his First Amendment right to petition the government for  
9 redress of grievances, as well as his Sixth and Fourteenth Amendment rights to a  
10 speedy trial, were violated in Spokane County.

11 Plaintiff states he was arrested on August 6, 2016, and then arraigned on  
12 August 16, 2016. He claims he had been a “ward” of Spokane County and had  
13 been on an “ankle monitor” since December 1996. He contends that when was  
14 placed at the Eastern State Hospital in the custody of the Department of Health  
15 Services for a competency evaluation on November 16, 2016, the “90-day statute  
16 of limitations” had already run.

17 Plaintiff asserts that on December 21, 2016, he read an article indicating the  
18 Department of Social Services, among others, was being held in contempt in a  
19 lawsuit brought by the American Civil Liberties Union, with fines in excess of \$30  
20 million. He claims that he then began petitioning county governments and courts,

1 to develop a “case of misconduct.” Plaintiff seeks \$90 million for “fraud,”  
2 claiming his right to a speedy trial and his rights against double jeopardy were  
3 violated. In addition, Plaintiff seeks to have his criminal record expunged in its  
4 entirety.

### 5 **DEPARTMENT OF SOCIAL AND HEALTH SERVICES**

6 As previously advised, “neither a State nor its officials acting in their official  
7 capacity are ‘persons’ under § 1983.” *Will v. Michigan Dept. of State Police*, 491  
8 U.S. 58, 71 (1989). Likewise, “arms of the State” such as the Department of  
9 Social and Health Services are not “persons” amenable to suit under 42 U.S.C. §  
10 1983. *Id.*, at 70. Accordingly, Plaintiff’s claim for monetary damages against the  
11 Department of Social and Health Services is dismissed.

### 12 **COURT DEFENDANTS**

13 Plaintiff states no claim against the Spokane County Superior Court or the  
14 Supreme Court of Washington State upon which relief may be granted. Plaintiff  
15 has presented no facts from which the Court could infer these entities are “persons”  
16 amenable to suit for damages under § 1983.

17 To the extent Plaintiff is complaining that a Spokane County Superior Court  
18 Judge referred him to a state hospital for a competency evaluation, even after his  
19 speedy trial time had allegedly run, such a claim would be precluded by absolute  
20 judicial immunity. Judges are absolutely immune for all judicial acts performed

1 within their subject matter jurisdiction when the plaintiff is seeking damages for a  
2 civil rights violation. *Stump v. Sparkman*, 435 U.S. 349, 356 (1978); *Ashelman v.*  
3 *Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986). An act is a “judicial” one when it is a  
4 function normally performed by a judge and the parties dealt with the judge in his  
5 judicial capacity. *Sparkman*, 435 U.S. at 362; *Crooks v. Maynard*, 913 F.2d 699,  
6 700 (9th Cir. 1990).

7 Absolute immunity exists even when there are charges that the judge acted  
8 maliciously; it exists “however erroneous the act may have been, and however  
9 injurious in its consequences it may have proved to the plaintiff.” *Bradley v.*  
10 *Fisher*, 80 U.S. 335, 347 (1871); *see also Pierson v. Ray*, 386 U.S. 547, 554 (1967)  
11 (a judge should not have to “fear that unsatisfied litigants may hound him with  
12 litigation charging malice or corruption.”). While errors in the complex  
13 calculations of speedy trial times may sometimes occur, Plaintiff has alleged no  
14 facts indicating a judge presiding over his state criminal proceedings acted in the  
15 “clear absence of all jurisdiction,” when ordering a competency evaluation. *Stump*  
16 *v. Sparkman*, 435 U.S. at 357. Plaintiff has failed to state a claim upon which  
17 relief may be granted.

## 18 **SPEEDY TRIAL AND DOUBLE JEOPARDY CHALLENGES**

19 Plaintiff contends that his right to a speedy trial and his right against being  
20 placed twice in jeopardy have been violated.

1 [T]o recover damages for allegedly unconstitutional conviction or  
2 imprisonment, or for other harm caused by actions whose  
3 unlawfulness would render a conviction or sentence invalid, a § 1983  
4 plaintiff must prove that the conviction or sentence has been reversed  
on direct appeal, expunged by executive order, declared invalid by a  
state tribunal authorized to make such determination, or called into  
question by a federal court's issuance of a writ of habeas corpus.

5 *Heck v. Humphrey*, 512 U.S. 477, 486–87, (1994) (footnote and citation omitted).

6 Plaintiff is seeking damages for constitutional violations that, if proven,  
7 would necessarily render his conviction and related imprisonment invalid. He has  
8 not stated that his conviction has been reversed or otherwise invalidated.

9 Therefore, Plaintiff is precluded by *Heck* from bringing a claim for monetary  
10 damages under 42 U.S.C. § 1983 for alleged speedy trial and double jeopardy  
11 violations at this time.

12 To the extent Plaintiff is requesting that his criminal record be expunged,  
13 this request may not be brought through a § 1983 action. *Preiser v. Rodriguez*, 411  
14 U.S. 475 (1973). Plaintiff would have to pursue a petition for writ of habeas corpus  
15 under 28 U.S.C. § 2254, after he has fully exhausted his state court remedies. *Id.* at  
16 487–90.


17 Although granted the opportunity to do so, Plaintiff has failed to amend his  
18 complaint to state a claim upon which relief may be granted. Therefore, **IT IS**  
19 **ORDERED** the First Amended Complaint, ECF No. 18, is **DISMISSED** for  
20 failure to state a claim under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1), but

1 without prejudice to seeking appropriate state court appellate review of his speedy  
2 trial and double jeopardy challenges.

3 Based on this Court's understanding of *Washington v. Los Angeles County*  
4 *Sheriff's Dep't*, 833 F.3d 1048 (9th Cir. 2016), this dismissal will **NOT** count as a  
5 "strike" pursuant to 28 U.S.C. § 1915(g).

6 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this  
7 Order, enter judgment, forward a copy to Plaintiff and close the file. The Court  
8 certifies any appeal of this dismissal would not be taken in good faith.

9 **DATED** this 12th day of December 2017.

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11 SALVADOR MENDOZA, JR.  
12 United States District Judge  
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